SPC Guiding Case No. 126: Jiangsu Tianyu Construction Group Co., Ltd. v. Wuxi Shidai Shengya Real Estate Development Co., Ltd. (Enforcement Supervision)

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Keywords

Enforcement; enforcement supervision; settlement agreement; delayed performance; completion of performance.

Holding

Where, in the course of performing a settlement agreement, the applicant for enforcement applies to resume enforcement because the person subject to enforcement has delayed performance, while at the same time continuing to accept and actively cooperating with the person subject to enforcement's subsequent performance until the settlement agreement is fully performed, this falls within the circumstance prescribed by the Civil Procedure Law and relevant judicial interpretations that, where a settlement agreement has been fully performed, enforcement of the original effective legal instrument shall not be resumed.

Basic Facts

In a construction contract dispute between Jiangsu Tianyu Construction Group Co., Ltd. (hereinafter "Tianyu Company") and Wuxi Shidai Shengya Real Estate Development Co., Ltd. (hereinafter "Shidai Company"), the Wuxi Intermediate People's Court of Jiangsu Province (hereinafter the "Wuxi Intermediate Court") rendered Civil Judgment (2014) Xi Min Chu No. 00103 on March 3, 2015, ordering that Shidai Company pay Tianyu Company project payment of RMB 14,454,411.83 and corresponding liquidated damages within five days from the date the judgment took legal effect. Shidai Company refused to accept the judgment and appealed; the Jiangsu Provincial High People's Court (hereinafter the "Jiangsu High Court") affirmed the original judgment on second instance. Because Shidai Company failed to perform its obligations, Tianyu Company applied to the Wuxi Intermediate Court for compulsory enforcement.

During the enforcement process, Tianyu Company and Shidai Company signed an Enforcement Settlement Agreement on December 1, 2015, agreeing that: 1. Shidai Company agreed to use three properties under its name (shops 53-106, 107, and 108 in Yungang Jiayuan, properties not involved in this case) to offset the entire claim in this case; 2. within 15 working days, Shidai Company would assist Tianyu Company in registering the debt-offsetting properties under the name of Tianyu Company or a person designated by it, and change the lessor under the lease contract relationship of the three shops to the name of Tianyu Company or a person designated by it; 3. the auction of the properties involved in this case would be suspended for 15 working days (excluding those already sold). After the above matters were performed, the properties involved would no longer be auctioned; if they were not handled as per the above agreement, the applicant could reapply for auction; 4. if the above agreement was performed, the property already secured in the current enforcement stage of this case would be returned to the account designated by Shidai Company; 5. after the agreement was performed, the two parties would have no other economic disputes.

After the settlement agreement was signed, on December 21, 2015 (the last working day agreed in the settlement agreement), Shidai Company signed two commercial housing sale and purchase contracts with Tianyu Company and one commercial housing sale and purchase contract with Li Siqi, and completed the online signing procedures for the three properties. On December 25, 2015, Tianyu Company issued two transfer certificates to Shidai Company, stating: "This company hereby purchases the shops 53-108, 53-106,

and 53-107 in Shuofang Yungang Jiayuan, and the purchase price offsets the outstanding balance of the project payment owed to this company for the Konggang No. 1 construction project, with the amount subject to the court's final ruling." On December 30, 2015, under the auspices of the Wuxi Intermediate Court, Shidai Company and Tianyu Company communicated regarding the performance of the settlement agreement and the release of the seized properties. The Wuxi Intermediate Court agreed to release 30 of the 39 seized properties, and on January 5, 2016, served a notice of assistance in release on the New District Branch of the Wuxi Real Estate Registration Center, releasing the seizure of 30 properties of Shidai Company. Because the above three shops had previously been leased by Shidai Company to the Wuxi Branch of Bank of Jiangsu Co., Ltd. (hereinafter "Bank of Jiangsu") in June 2014, in January 2016, Shidai Company (Party A), Tianyu Company (Party B), and Li Siqi (Party C) signed a Supplementary Agreement, clarifying that from the date of signing the Supplementary Agreement, Shidai Company would completely withdraw from the original House Lease Contract, and Tianyu Company and Li Siqi should, in accordance with the terms agreed in the original House Lease Contract, directly claim rent from Bank of Jiangsu. At the same time, the three parties confirmed that the rent before December 31, 2015 had been paid in full, with Shidai Company as the rent recipient. On January 26, 2016, Shidai Company sent a letter to Bank of Jiangsu to notify it. After the lease relationship was changed, Tianyu Company and Li Siqi actually collected the rent from January 1, 2016. On January 14, 2016, Tianyu Company's Gong Kuilin received the initial registration certificates and land division certificates for the three shops. On February 25, 2016, Shidai Company issued a total of three unified invoices (electronic) for the sale of immovable property to Tianyu Company and Li Siqi for the three shops, with a total amount of RMB 11,999,999. After the invoices were issued, Tianyu Company refused to accept them on the grounds that Shidai Company had breached the contract, so Shidai Company mailed them to the Wuxi Intermediate Court, requesting the court to forward them. On April 1, 2016, the Wuxi Intermediate Court forwarded the invoices to Tianyu Company, and Tianyu Company accepted them. In November 2016, Tianyu Company and Li Siqi completed the ownership registration procedures for the three shops, and Li Siqi further transferred the shop under his name to non-parties Luo Mouming and Chen Mou. As found, the two shops registered under Tianyu Company's name were seized by the Qilihe District People's Court of Lanzhou City, Gansu Province on December 2, 2016, and were placed under sequential seizure by other cases of that court.

On January 27, 2016 and March 1, 2016, Tianyu Company twice submitted written applications to the Wuxi Intermediate Court, requesting the resumption of enforcement of this case on the grounds that Shidai Company violated the settlement agreement and failed to complete the property certificate and lease contract change matters, requesting that the nine seized properties under Shidai Company's name be auctioned, and that after deducting the RMB 11,999,999 stated in the three invoices, the debt amount determined in the effective judgment continue to be satisfied. On April 1, 2016, the Wuxi Intermediate Court notified Tianyu Company and Shidai Company that: Shidai Company had failed to perform in accordance with the settlement agreement of the two parties; since 30 of the previously seized properties had already been released, the remaining nine properties would continue to be auctioned; and the value of the three properties in the settlement agreement would be determined according to the amount specified in the contracts and invoices of the two parties, which could be directly recognized as the amount already secured in enforcement and deducted from the total amount to be enforced. On the same day, April 1, 2016, the Wuxi Intermediate Court published an auction announcement on Taobao to auction the nine seized properties of the person subject to enforcement. Shidai Company raised an objection to the Wuxi Intermediate Court, requesting the revocation of the auction of Shidai Company's properties and the confirmation that this enforcement case was completed in accordance with the settlement agreement of the two parties.

Judgment

On July 27, 2016, the Wuxi Intermediate People's Court of Jiangsu Province rendered Enforcement Ruling (2016) Su 02 Zhi Yi No. 26: dismissing the objection application of Wuxi Shidai Shengya Real Estate Development Co., Ltd. Wuxi Shidai Shengya Real Estate Development Co., Ltd. refused to accept it and

applied to the Jiangsu Provincial High People's Court for reconsideration. On September 4, 2017, the Jiangsu Provincial High People's Court rendered Enforcement Ruling (2016) Su Zhi Fu No. 160:

1. Enforcement Ruling (2016) Su 02 Zhi Yi No. 26 of the Wuxi Intermediate People's Court of Jiangsu Province is revoked.

2. The notice issued by the Wuxi Intermediate People's Court of Jiangsu Province on April 1, 2016, to continue auctioning the remaining nine properties and to deduct the enforcement target amount as determined by the contracts and invoices, is revoked.

3. The auction published by the Wuxi Intermediate People's Court of Jiangsu Province on April 1, 2016, of the nine properties belonging to the person subject to enforcement Wuxi Shidai Shengya Real Estate Development Co., Ltd., namely Yungang Jiayuan rooms 39-1203, 21-1203, 11-202, 17-102, 17-202, 36-1402, 36-1403, 36-1404, and 37-1401, is revoked.

Jiangsu Tianyu Construction Group Co., Ltd. refused to accept the reconsideration ruling of the Jiangsu Provincial High People's Court and filed a petition with the Supreme People's Court. On December 29, 2018, the Supreme People's Court rendered Enforcement Ruling (2018) Zui Gao Fa Zhi Jian No. 34: dismissing the petition of petitioner Jiangsu Tianyu Construction Group Co., Ltd.

Reasoning

The Supreme People's Court held that, under Article 467 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China, where one party fails to perform or incompletely performs a settlement agreement voluntarily reached by both parties during enforcement, and the other party applies for enforcement of the original effective legal instrument, the people's court shall resume enforcement, but the part of the settlement agreement already performed shall be deducted. Where the settlement agreement has been fully performed, the people's court shall not resume enforcement. In this case, according to the settlement agreement, Shidai Company violated the time agreed for assisting in the transfer registration of the debt-offsetting properties and other obligations. Tianyu Company twice applied to the people's court to resume enforcement before Shidai Company completed all its assistance obligations. However, on the whole, it was still appropriate to determine that the settlement agreement had been fully performed and should not be subject to resumed enforcement.

The main reasons were as follows:

First, the settlement agreement was signed on December 1, 2015, agreeing to complete the ownership transfer registration of the debt-offsetting properties and change the lessor under the lease contract relationship of the three shops to Tianyu Company or its designee within 15 working days. This itself was somewhat difficult, and Tianyu Company should have anticipated it. Second, on the last day of the agreed period, December 21, 2015, Shidai Company signed commercial housing sale and purchase contracts with Tianyu Company and its designee Li Siqi respectively and completed the online signing procedures for the three debt-offsetting properties. In terms of actual effect, Tianyu Company had obtained relatively sufficient assurance of acquiring the debt-offsetting properties. Moreover, in January 2016, Shidai Company signed a Supplementary Agreement with Tianyu Company and its designee Li Siqi, making agreements on the change of the lease contract relationship of the debt-offsetting properties and Shidai Company's withdrawal from the lease contract relationship; and on January 26, 2016, it sent a letter to Bank of Jiangsu, notifying it of the sale of the leased subject matter and requesting Bank of Jiangsu to promptly complete the lessor change procedures with the new buyers. After the lease relationship was changed, Tianyu Company and Li Siqi actually collected the rent from January 1, 2016. At the same time, on January 14, 2016, Shidai Company delivered the initial registration certificates and land division certificates of the three shops. It can be seen that within a relatively short period, Shidai Company successively performed the obligations of changing the lease relationship of the debt-offsetting properties, transferring the right to the proceeds of the debt-offsetting properties, and delivering the initial registration certificates and land division certificates; that

is, Shidai Company had been actively performing its obligations. Third, with respect to Shidai Company's above series of active performance, Tianyu Company accepted them one by one despite knowing that the performance had exceeded the agreed period, and even actively cooperated with Shidai Company in applying to the people's court to release the seized properties. Tianyu Company's above conduct had fully reflected its acceptance of the overdue performance and its formation of a relatively strong reliance relationship with Shidai Company in continuing to perform the settlement agreement; in the absence of new explicit agreements, Shidai Company should be allowed to complete the performance of all obligations within a reasonable period. Fourth, after Shidai Company had performed a series of main obligations and, on January 26, notified the lessee of the debt-offsetting properties of the change in property ownership, enabling Tianyu Company and its designee to actually obtain the rental proceeds, Tianyu Company first proposed resuming enforcement on January 27, and refused to accept the invoices after Shidai Company issued them, which was contrary to good faith. Fifth, Tianyu Company did not provide sufficient evidence to prove that the delayed performance in this case would frustrate the purpose of signing the settlement agreement and seriously harm its interests. On the contrary, judging from Tianyu Company's active acceptance of performance and its failure to promptly apply for resumption of enforcement, the delayed performance did not frustrate the purpose of signing the settlement agreement. Sixth, when Shidai Company mailed the invoices to the court for forwarding because Tianyu Company refused to accept them, all of its assistance obligations should be deemed to have been fully performed; at that time, the court had not actually resumed enforcement, and it would be inappropriate to resume enforcement thereafter. In sum, in this case it was appropriate to determine that the settlement agreement had been fully performed, and enforcement should not be resumed.

(The judges of the effective judgment: Huang Jinlong, Xue Guizhong, and Xiong Jinsong.)

Relevant Legal Provisions

Article 204 of the Civil Procedure Law of the People's Republic of China.

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